

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

MCU CLOCKING SOLUTIONS, INC., Plaintiff, v. ATMEL CORPORATION, Defendant.	Case No. 5:15-cv-02212-PSG
MCU CLOCKING SOLUTIONS, INC., Plaintiff, v. FREESCALE SEMICONDUCTOR, INC., Defendant.	Case No. 5:15-cv-02213-PSG
MCU CLOCKING SOLUTIONS, INC., Plaintiff, v. MICROCHIP TECHNOLOGY, INC., Defendant.	Case No. 5:15-cv-02546-PSG

**[PROPOSED] STIPULATED PROTECTIVE ORDER**

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, MCU Clocking Solutions, Inc. (“Plaintiff” or “MCU”), Freescale Semiconductor, Inc. (“Freescale”), Microchip Technology Inc. (“Microchip”), and Atmel Corporation (“Atmel”) (Microchip, Freescale, and Atmel collectively referred to as “Defendants” and all parties collectively referred to as “the Parties”) propose the following Stipulated Protective Order (“Protective Order”). **IT IS**

**HEREBY ORDERED THAT:**

## 1 PURPOSES AND LIMITATIONS

28 | 1.1. The Parties recognize that documents and information sought, produced, and/or

1 disclosed by the Parties in this matter or by third parties may contain confidential, proprietary,  
2 and/or commercially-sensitive information for which special protection from public disclosure  
3 and from use for any purpose other than prosecuting this action would be warranted.  
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5       1.2. This Protective Order is intended to expedite the flow of discovery material, to  
6 facilitate prompt resolution of disputes over confidentiality of discovery materials, to adequately  
7 protect information the Parties are entitled to keep confidential, to ensure only materials entitled  
8 to such confidentiality are subject to confidential treatment, and to ensure the Parties are  
9 permitted reasonably necessary use of such materials in preparation for and during trial.  
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11       1.3. The Parties acknowledge that this Protective Order does not confer blanket  
12 protections on all disclosures or responses to discovery and that the protection it affords extends  
13 only to the limited information or items that are entitled to confidential treatment under  
14 applicable legal principles. Any confidentiality designation pursuant to this Protective Order  
15 shall be made by the designating party reasonably and in the good faith belief that such  
16 designation is no more than necessary to protect the designating party's competitive business  
17 interests and preventing public disclosure of its confidential, proprietary and/or commercially-  
18 sensitive information.  
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20       1.4. Any Protected Material (as defined below) that is provided subject to the  
21 restrictions of this Protective Order may be used only for the purposes of prosecuting, defending  
22 or attempting to settle these actions, and not for any other purpose, including for the assertion of  
23 other patents in other actions. This Protective Order does not confer any right to any one  
24 Defendant to access the Protected Material of any other Defendant, nor may Plaintiff share any  
25 Defendant's Protected Material with any other Defendant absent further Court order or express  
26 written permission (including through email) from the Party, or its counsel, who produced the  
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1 material.

2       2.       **DEFINITIONS**

3       2.1       **"CONFIDENTIAL" Information or Items:** information (regardless of how it is  
 4 generated, stored or maintained) or tangible things of a technical, financial, proprietary or other  
 5 commercially-sensitive nature that the Designating Party (i) would not normally reveal to third  
 6 parties except in confidence, or has undertaken with others to maintain in confidence, (ii)  
 7 believes in good faith is significantly sensitive, or (iii) protected by a right to privacy under  
 8 federal or state law or any other applicable privilege or right related to confidentiality or privacy.  
 9

10       2.2       **Counsel (without qualifier):** Outside Counsel or In-House Counsel and all support  
 11 staff thereof.

12       2.3       **Designating Party:** A Party or non-party that designates information or items that  
 13 it produces in Disclosure or Discovery Material as "CONFIDENTIAL", "HIGHLY  
 14 CONFIDENTIAL – ATTORNEYS' EYES ONLY", or "HIGHLY CONFIDENTIAL – SOURCE  
 15 CODE."

16       2.4       **Expert:** A person who has been retained by a Party or its Counsel to serve as an  
 17 expert witness or as a consulting expert in this action and who is not a current officer, director, or  
 18 employee of a Party or of a competitor of a Party and who, at the time of retention, does not  
 19 anticipate becoming an officer, director or employee of a Party or of a competitor of a Party.  
 20 Nothing in this order purports to change the requirements for offering testimony under Fed. R.  
 21 Evid. 703, or to define the term "expert" for purposes other than those addressed in this  
 22 Protective Order.

23       2.5       **"HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or**  
 24       **Items:** "CONFIDENTIAL" Information (as defined in 2.1 above) that the Designating Party

1 believes in good faith is highly confidential or commercially sensitive in nature and has  
 2 significant competitive value such that unrestricted disclosure to another Party or non-party  
 3 would create a substantial risk of serious injury to the competitive position of the Producing  
 4 Party, and such that it needs to be given a higher level of protection than "CONFIDENTIAL".  
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6       2.6    "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items:  
 7 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items representing  
 8 computer code and associated comments and revision histories that define or otherwise describe  
 9 in detail the algorithms or structure of software or hardware designs, or other materials quoting  
 10 or containing the Designating Party's source code. The term "SOURCE CODE information"  
 11 includes, without limitation, RTL, HDL, microcode, source or object code or similarly sensitive  
 12 software code, GDSII (and similar formats), and photomasks that the Designating Party believes  
 13 in good faith is not generally known to others and has significant competitive value such that  
 14 unrestricted disclosure to another Party or non-Party would create a substantial risk of serious  
 15 harm that could not be avoided by less restrictive means.  
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17       2.7    In-House Counsel: Attorneys who are employees of a Party, and support staff of  
 18 those employees, including independent contractors who provide assistance on an exclusive basis  
 19 to one of more of the attorneys.  
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21       2.8    Outside Counsel: Attorneys of record (and their support staff) who are not  
 22 employees of a Party but who are retained to represent or advise a Party in this action.  
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24       2.9    Party: Any Party to this action, including all of its officers, directors, and  
 25 employees, and all support staff thereof.  
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27       2.10   Producing Party: A Party or non-party that discloses or produces Disclosure or  
 28 Discovery Material in this action.  
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1           2.11 Professional Vendors: Persons or entities that provide litigation support services  
2 (e.g., photocopying; videotaping; translating; electronically stored information (ESI) consulting  
3 or document management; preparing exhibits or demonstrations; document management; jury  
4 consulting; mock trial coordination) and their employees and subcontractors (including, but not  
5 limited to, mock jurors).

7           2.12 Protected Material: Any discovery material that is designated as  
8 "CONFIDENTIAL", "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY", or  
9 "HIGHLY CONFIDENTIAL – SOURCE CODE" as provided for in this Order.

10           2.13 Receiving Party: A Party that receives any discovery material from a Producing  
11 Party in this action.

13           3. **SCOPE**

14           3.1 The protections conferred by this Protective Order cover not only Protected  
15 Material (as defined above), but also any information copied or extracted from Protected  
16 Material, as well as copies, excerpts, summaries, or compilations thereof, and testimony,  
17 conversations, or presentations by a Party or Counsel to or in court or in other settings that might  
18 reveal Protected Material.

20           4. **DURATION**

21           4.1 Following the termination of this action, the confidentiality obligations imposed  
22 by this Protective Order shall remain in effect until a Designating Party agrees or a court order  
23 directs otherwise.

25           4.2 This Protective Order shall be binding upon the Parties and their attorneys,  
26 successors, executors, personal representatives, administrators, heirs, legal representatives,  
27 assigns, subsidiaries, divisions, employees, agents, independent contractors, experts, consultants,  
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1 and all other persons or organizations over which the Parties have control.

2       5.     **DESIGNATING PROTECTED MATERIAL**

3       5.1     Manner and Timing of Designations: Except as otherwise provided in this  
 4 Protective Order or as otherwise stipulated or ordered, material that a Designating Party believes  
 5 in good faith qualifies for protection under this Protective Order must be so designated before the  
 6 material is disclosed or produced. Designation in conformity with this Protective Order shall be  
 7 made as follows:

8               (a)     For Information in documentary (including "electronically stored  
 9 information") form (apart from transcripts of depositions or other pretrial or trial proceedings)  
 10 the Designating Party shall affix the legend "CONFIDENTIAL", "HIGHLY CONFIDENTIAL –  
 11 ATTORNEYS' EYES ONLY", or "HIGHLY CONFIDENTIAL – SOURCE CODE"  
 12 conspicuously on each page that contains Protected Material.

13       A Party or non-party that makes original documents or materials available for inspection  
 14 need not designate them for protection until after the inspecting Party has indicated which  
 15 material it would like copied or produced. Before and during the inspection, all material made  
 16 available for inspection shall be deemed "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
 17 ONLY." After the inspecting Party has identified the documents it wants copied and produced,  
 18 the Producing Party must, within five (5) business days of the inspection, determine which  
 19 documents, or portions thereof, qualify for protection under this Order and, before producing the  
 20 specified documents, the Producing Party must affix the appropriate legend to each page that  
 21 contains Protected Material.

22               (b)     For testimony given in deposition or in other pretrial or trial proceedings  
 23 the Designating Party shall specify any portions of the testimony that it wishes to designate no

1 later than 30 calendar days after the final transcript of the deposition or other proceeding has  
2 been received. For deposition transcripts, the Party or non-party may identify that portion of a  
3 transcript that it believes in good faith qualifies for protection under this Order as  
4 "CONFIDENTIAL", "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY", or  
5 "HIGHLY CONFIDENTIAL - SOURCE CODE." When it is impractical to identify separately  
6 each portion of testimony that is entitled to protection and it appears that substantial portions of  
7 the testimony may qualify for protection, the Designating Party may invoke on the record (before  
8 the deposition, hearing, or other proceeding is concluded), that the entire transcript shall be  
9 treated as "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY". All deposition  
10 transcripts not designated during the deposition will nonetheless be treated as "HIGHLY  
11 CONFIDENTIAL - ATTORNEYS' EYES ONLY" until the time within which it may be  
12 appropriately designated as provided for herein has passed. Any Protected Material that is used  
13 in the taking of a deposition shall remain subject to the provisions of this Protective Order, along  
14 with the transcript pages of the deposition testimony dealing with such Protected Material. In  
15 such cases the court reporter shall be informed of this Protective Order and shall be required to  
16 operate in a manner consistent with this Protective Order. In the event the deposition is  
17 videotaped, the original and all copies of the videotape shall be marked by the video technician  
18 to indicate that the contents of the videotape are subject to this Protective Order, substantially  
19 along the lines of "This videotape contains confidential testimony used in this case and is not to  
20 be viewed or the contents thereof to be displayed or revealed except pursuant to the terms of the  
21 operative Protective Order in this matter or pursuant to written stipulation of the parties."  
22 Counsel for any Designating Party shall have the right to exclude from oral depositions, other  
23 than the deponent, deponent's counsel, the reporter and videographer (if any), any person who is  
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1 not authorized by this Protective Order to receive or access Protected Material based on the  
 2 designation of such Protected Material. Such right of exclusion shall be applicable only during  
 3 periods of examination or testimony regarding such Protected Material.

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5 (c) For information produced in some form other than documentary, and for  
 6 any other tangible items, the Designating Party shall affix, in a prominent place on the exterior of  
 7 the medium, container or containers in which the information or item is stored, the appropriate  
 8 legend.

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10 5.2 Inadvertent Failure to Designate Properly: An inadvertent failure to designate  
 11 qualified information or items does not, standing alone, waive the Designating Party's right to  
 12 secure protection under this Order for such material. Upon discovery of an inadvertent failure to  
 13 designate, a Producing Party may notify the Receiving Party in writing that the material is to be  
 14 designated. Upon receipt of such notice, the Receiving Party must make reasonable efforts to  
 15 assure that the material is thereafter treated in accordance with the provisions of this Order. The  
 16 Designating Party shall provide substitute copies of documents bearing the confidentiality  
 17 designation. Upon receiving substitute copies, the Receiving Parties shall return or securely  
 18 destroy, at the Designating Party's option, all material that was not designated properly.

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20 6. **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

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22 6.1 Timing of Challenges: A Party does not waive its right to challenge a  
 23 confidentiality designation by electing not to mount a challenge promptly after the original  
 24 designation is disclosed.

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26 6.2 Meet and Confer: A Party that elects to initiate a challenge to a Designating  
 27 Party's confidentiality designation must do so in good faith and must begin the process by  
 28 identifying, in writing, the documents or information that the challenging Party contends should

1 be differently designated, and the basis for its belief that the confidentiality designation is  
 2 improper. The Designating Party shall, within seven (7) calendar days after receiving such  
 3 written notice, advise the challenging party, in writing, of the basis for its designation or re-  
 4 designation. Within seven (7) calendar days thereafter, the parties shall meet and confer directly  
 5 in good faith to resolve the matter.

6.3 Judicial Intervention: A Party that elects to challenge a confidentiality designation  
 7 after considering the justification offered by the Designating Party (as described in the preceding  
 8 section) may, within ten (10) calendar days of the parties' meet and confer, seek the Court's  
 9 assistance in resolving the dispute in accordance with the Court's discovery dispute procedures.  
 10 All parties shall continue to afford the material in question the level of protection to which it is  
 11 entitled under the Producing Party's designation until the court rules on the challenge.

14 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

15 7.1 Procedures for Disclosure and Review of Material Designated "HIGHLY  
 16 CONFIDENTIAL – SOURCE CODE." Protected Material designated as "HIGHLY  
 17 CONFIDENTIAL – SOURCE CODE" (as defined in Section 2.6) shall be subject to additional  
 18 protections given the particularly sensitive nature of the information.

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 20 (a) Unless otherwise advised by the Producing Party, material designated  
 21 "HIGHLY CONFIDENTIAL – SOURCE CODE" will be made available for review, at the  
 22 Producing Party's sole discretion at the following:

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 24 (i) At the location where the SOURCE CODE information is kept in  
 25 the ordinary course of business; or,  
 26 (ii) At a secure room in a secure facility selected by the Producing  
 27 Party; or,  
 28 (iii) Via a remotely accessible secured computer; or

1 (iv) At any location mutually agreed to by Plaintiff and the Producing  
2 Party.

3 (b) Upon reasonable notice by the Receiving Party of no less than five (5)  
4 business days, all Information or Items designated "HIGHLY CONFIDENTIAL - SOURCE  
5 CODE" will be made available for review between 9:00 am and 5:00 pm, and any other time  
6 that is reasonable under the circumstances, by the Producing Party to the Receiving Party's  
7 Experts who have been approved to access information under Sections 7.4-7.5, in a secured  
8 room on a secured non-networked computer, at the locations stated above, as necessary and  
9 appropriate to prevent and protect against any unauthorized copying, transmission, removal, or  
10 other transfer of any information outside or away from the computer on which the information is  
11 provided for inspection (the "Computer"). Receiving Party's Outside Counsel also may  
12 participate in any such review by the Receiving Party's Experts. To the extent review of  
13 SOURCE CODE information is reasonably necessary for trial, the Parties shall negotiate in  
14 good faith, during the pre-trial phase of these cases, procedures for the use and handling of  
15 SOURCE CODE information during trial. The Producing Party shall install reasonable tools or  
16 programs on the Computer to allow the Receiving Party to review and search the SOURCE  
17 CODE information if such tools exist and are presently used in the ordinary course of the  
18 Producing Party's business. If the Receiving Party requires additional program(s) or review  
19 tool(s) or any particular type of program or review tool in addition to the reasonable tools or  
20 programs provided by the Producing Party, the Requesting Party shall provide (at the Receiving  
21 Party's cost) a licensed copy of the additional program(s) or review tool(s) to the Producing  
22 Party reasonably in advance of the inspection.

23 (c) The Receiving Party's Outside Counsel and Experts shall be entitled to  
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1 take notes relating to the SOURCE CODE information, but may not copy portions of the Source  
2 Code information into such notes. No loose paper or other paper that can be used in a printer  
3 may be brought into the secure room. Such notes shall be subject to the provisions of section (h)  
4 below. No copies of all or any portion of the SOURCE CODE information may leave the room  
5 in which the information is inspected unless otherwise provided herein. Furthermore, no other  
6 written or electronic record of the SOURCE CODE information is permitted except as otherwise  
7 provided herein. The Receiving Party's Outside Counsel and Experts shall not be permitted to  
8 bring any networked device or any device containing a camera or scanner into the room in  
9 which the SOURCE CODE information is produced, absent written permission (which may be  
10 through email) from the Producing Party.

13 (d) The Producing Party shall make available a printer with commercially  
14 reasonable printing speeds for on-site printing during inspection of the SOURCE CODE  
15 information, or in the alternative at the Producing Party's discretion, provide a mechanism by  
16 which the Receiving Party may designate certain portions of the information for production by  
17 the Producing Party. Source Code may only be printed on watermarked pre-Bates numbered  
18 paper provided by the Producing Party. The Receiving Party may print or designate such  
19 portions only when necessary to prepare any filing with the Court or to serve any pleadings or  
20 other papers on any other Party (including a testifying expert's expert report). The Receiving  
21 Party shall print or designate for production only such portions as are reasonably necessary for  
22 the purposes for which any part of the SOURCE CODE information is printed or designated for  
23 production at the time, but shall not request paper copies for the purpose of reviewing SOURCE  
24 CODE information in the first instance (*i.e.*, an "offline" review). In no event may the  
25 Receiving Party print or designate for production any contiguous block of SOURCE CODE  
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1 information that results in more than 30 consecutive pages. In addition, no more than 750 pages  
2 of total source code (not including copies of original printouts), whichever is less, may be  
3 printed. No additional copies of the SOURCE CODE information shall be provided by the  
4 Producing Party. Should the Receiving Party require, for good cause, additional copies, the  
5 Producing Parties shall consider a request for additional copies in good faith. The Receiving  
6 party may also seek the production of additional copies by leave of court. Printed copies of the  
7 SOURCE CODE information may not be converted into an electronic document, and may not  
8 be scanned using optical character recognition (“OCR”) technology. All SOURCE CODE  
9 information printouts must include (1) the paths and filenames from which the SOURCE CODE  
10 information was printed and (2) line numbers.

13 Upon printing any such portions of SOURCE CODE information, the printed pages shall  
14 be collected by the Producing Party. Within seven (7) business days of being notified that such  
15 original printouts have been made or any request for production by the Receiving Party, the  
16 Producing Party shall either (i) send one copy set of such pages to the Receiving Party, for next  
17 day business delivery, or (ii) inform the Receiving Party that it objects that the printed or  
18 designated portions are excessive and/or not done for a permitted purpose. If, after meeting and  
19 conferring, the Producing Party and the Receiving Party cannot resolve the objection, either party  
20 shall be entitled to seek Court intervention to resolve the dispute.

23 (e) A list of names of Outside Counsel and Experts who will view the  
24 SOURCE CODE information will be provided to the Producing Party in conjunction with any  
25 written (including email) notice requesting inspection, and in no event later than five (5) business  
26 days in advance of such inspection. The Receiving Party in cooperation with the Producing Party  
27 shall maintain a daily log of the names of persons who enter the locked room to view the  
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1 SOURCE CODE information and when they enter and depart. The Producing Party shall be  
2 entitled to have a person observe from a distance the activities of the Receiving Party's  
3 representatives during any such review, but only to ensure that such activities are permitted  
4 under this Order, and to receive a copy of the log. The Producing Party shall not, however, be  
5 allowed to monitor the conduct of the Receiving Party in such a manner as to obtain information  
6 that would otherwise be protected from disclosure by the Receiving Party's claim of attorney-  
7 client privilege, the work product immunity, or any other privilege, doctrine, right, or immunity.  
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9 (f) Unless otherwise agreed in advance by the Parties in writing, following  
10 each inspection, the Receiving Party's Outside Counsel and Experts shall remove all notes,  
11 documents, and all other materials from the review room. The Producing Party shall not be  
12 responsible for any items left in the room during or following each inspection session.

13 (g) Other than as provided in section (d) above, the Receiving Party's Outside  
14 Counsel and Experts shall not copy, remove, or otherwise transfer any information from the  
15 Source Code Computer including, without limitation, copying, removing, or transferring the  
16 information onto any other computers, peripheral equipment, storage devices, or storage media.  
17 The Receiving Party's Outside Counsel and Experts will not transmit any SOURCE CODE  
18 information in any way from the Producing Party's facilities or the offices of its Outside Counsel  
19 of record. The Receiving Party's Outside Counsel and Experts are prohibited from bringing  
20 outside electronic devices, including but not limited to laptops, floppy drives, zip drives, or other  
21 hardware into the secure room. Nor shall any cellular telephones, personal digital assistants  
22 (PDAs), Blackberries, cameras, voice recorders, Dictaphones, external or portable telephone  
23 jacks or other outside electronic devices be permitted inside the secure room, except for medical  
24 devices, implants, or equipment reasonably necessary for any legitimate medical reason. The  
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1 Producing Party may monitor the Receiving Party's representatives to ensure compliance with  
2 this Protective Order and may require Receiving Party's them to sign a log tracking time in and  
3 time out of the Source Code Room.

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5 (h) The Outside Counsel and Experts (who have been approved to access  
6 information under Sections 7.4-7.5) for a Receiving Party shall maintain and store any paper  
7 copies of the SOURCE CODE information or notes related to such SOURCE CODE  
8 information (as referenced in section (c) above) in a locked room or storage container when not  
9 being actively reviewed or otherwise being transferred as permitted by this Order.

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11 (i) The Receiving Party may make no more than three (3) additional paper  
12 copies of any portions of the SOURCE CODE information printed or designated for production  
13 pursuant to Section 7.2(c), not including copies attached to court filings, copies used at  
14 depositions, or copies made by Outside Counsel for the purposes of drafts, etc. The Receiving  
15 Party shall maintain a log of all copies of the information (received from a Producing Party) that  
16 are provided by the Receiving Party to any qualified person under Section 7.4(b). The log shall  
17 include the names of the recipients and reviewers of copies and locations where the copies are  
18 stored. Any paper copies of information shall be designated "HIGHLY CONFIDENTIAL -  
19 SOURCE CODE" and shall be stored or viewed only at (i) the offices of Outside Counsel for the  
20 Receiving Party, (ii) the offices of Experts who have been approved to access information under  
21 Section 7.5, (iii) the site where any deposition is taken, (iv) the Court, or (v) any intermediate  
22 location necessary to transport the information to a hearing, trial, or deposition. Any such paper  
23 copies shall be maintained at all times in a locked and secure location. Should the Receiving  
24 Party require additional copies, it shall request permission to make such copies from the  
25 Producing Party, who will consider the request in good faith. The Producing Party shall be  
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1 entitled to a copy of the log upon request, but the Producing Party may only request such a log  
2 one time per month and at the conclusion of the litigation. If the Producing Party believes in  
3 good faith that there has been access to SOURCE CODE information not in compliance with  
4 this Order, the Parties shall meet and confer to address and resolve the concern. If, after meeting  
5 and conferring the Parties cannot resolve the concern, the Producing Party shall be entitled to  
6 seek a Court resolution of whether there has been access to SOURCE CODE information not in  
7 compliance with this Order.

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9 (j) The Receiving Party may include excerpts of SOURCE CODE  
10 information in a pleading, exhibit, expert report, discovery document, deposition transcript,  
11 other Court document, or any drafts of SOURCE CODE information. The Receiving Party shall  
12 only include such excerpts as are reasonably necessary for the purposes for which such part of  
13 the information is used. To the extent portions of information are quoted from SOURCE CODE  
14 information, either (i) the entire document will be stamped HIGHLY CONFIDENTIAL –  
15 SOURCE CODE, or (ii) those pages containing quoted information will be separately bound,  
16 and stamped as HIGHLY CONFIDENTIAL – SOURCE CODE. All SOURCE CODE shall be  
17 filed under seal. Copies of SOURCE CODE information that are marked as deposition exhibits  
18 shall not be provided to the court reporter or attached to deposition transcripts; rather, the  
19 deposition record will identify the exhibit by its production numbers.

20  
21 (k) All paper copies of documents containing SOURCE CODE information  
22 shall be securely destroyed if they are no longer necessary in the litigation (e.g., extra copies at  
23 the conclusion of a deposition).

24  
25 7.2 Disclosure of "CONFIDENTIAL" Information or Items: Unless otherwise  
26 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may

disclose any information or item designated "CONFIDENTIAL" only to:

(a) The Receiving Party's Outside Counsel of record in this action, as well as employees of said Outside Counsel to whom disclosure is reasonably necessary to conduct this action;

(b) Two (2) officers, directors, employees, or consultants, whether full or part time (including In-House Counsel) of the Receiving Party to whom disclosure is reasonably necessary to conduct this action, who have provided a signed copy of the "Acknowledgement and Agreement to Be Bound by Stipulated Protective Order" (Exhibit A) to the Designating Party;

(c) Experts (as defined in Section 2.4, above) of the Receiving Party to whom disclosure is reasonably necessary to conduct this action and who have signed the "Acknowledgement and Agreement to Be Bound by Stipulated Protective Order" (Exhibit A) and for which no unresolved objections to such disclosure exist after compliance with the requirements set out in Section 7.5 below.

(d) The Court and its personnel.

(e) Any designated arbitrator or mediator who is assigned to hear this matter, or who has been selected by the Parties, and his or her staff, who have signed the "Acknowledgement and Agreement to Be Bound by Stipulated Protective Order" (Exhibit A);

(f) Court reporters and videographers employed in connection with this case;

(g) Professional Vendors to whom disclosure is reasonably necessary to conduct this action and a representative of which has signed the "Acknowledgement and Agreement to Be Bound by Stipulated Protective Order" (Exhibit A), provided, however, that copy vendors (such as Parcels, Inc.) shall not be required to sign Exhibit A;

(h) Persons who appear on the face of the Protected Material as an author,

addressee, or recipient of the document or have prior knowledge of the Protected Material as established through testimony;

(i) During deposition and/or at trial, current employees of the Producing Party that produced the documents or information, provided that such employees may not retain copies of Protected Material unless permitted by other provisions of this Order; and

(j) Any other person with the prior written consent of the Producing Party.

## 7.3 Disclosure of "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY"

Information or Items: A Producing Party may designate information as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" if the Producing Party reasonably and in good faith believes that the information is highly confidential or commercially sensitive in nature and has significant competitive value such that unrestricted disclosure to a Party or non-party would create a substantial risk of serious harm to the Producing Party, such that it should be given a higher level of protection than "CONFIDENTIAL" information. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" only to:

(a) The Receiving Party's Outside Counsel of record in this action, as well as employees of said Outside Counsel to whom disclosure is reasonably necessary to conduct this action;

(b) Experts (as defined in Section 2.4, above) of the Receiving Party to whom disclosure is reasonably necessary to conduct this action and who have signed the "Acknowledgement and Agreement to Be Bound by Stipulated Protective Order" (Exhibit A) and for which no unresolved objections to such disclosure exist after compliance with the requirements set out in Section 7.5 below.

- (c) The Court and its personnel;
- (d) Any designated arbitrator or mediator who is assigned to hear this matter, or who has been selected by the Parties, and his or her staff, who have signed the "Acknowledgement and Agreement to Be Bound by Stipulated Protective Order" (Exhibit A);
- (e) Court reporters and videographers employed in connection with this case;
- (f) Professional Vendors, except for jury consultants and mock jurors, to whom disclosure is reasonably necessary to conduct this action and a representative of which has signed the "Acknowledgement and Agreement to Be Bound by Stipulated Protective Order" (Exhibit A), provided, however, that copy vendors (such as Parcels, Inc.) shall not be required to sign Exhibit A;

(g) Persons who appear on the face of the Protected Material as an author, addressee, or recipient of the document or have prior knowledge of the Protected Material as established through testimony; and

(h) During depositions, current employees of the Producing Party that produced the documents or information. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Information must be separately bound by the court reporters and may not be disclosed to anyone except as permitted under this Order.

(i) Any other person with the prior written consent of the Producing Party.

7.4 Disclosure of "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items: Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY CONFIDENTIAL – SOURCE CODE" in accordance with the provisions of Section 7.1 of this Order and only to:

(a) The Receiving Party's Outside Counsel of record in this action, as well as employees of said Outside Counsel to whom disclosure is reasonably necessary to conduct this

1 action (by executing this Order, Outside Counsel acknowledges the obligation on behalf of all  
2 employees of Outside Counsel to abide by the terms and conditions of the Order, and will make  
3 appropriate disclosure of these terms and conditions to all employees who will have access to  
4 information pursuant to the Order);  
5

6 (b) Experts (as defined in Section 2.4, above) of the Receiving Party to whom  
7 disclosure is reasonably necessary to conduct this action and who have signed the  
8 "Acknowledgement and Agreement to Be Bound by Stipulated Protective Order" (Exhibit A) and  
9 for which no unresolved objections to such disclosure exist after compliance with the  
10 requirements set out in Section 7.5 below. Without the express prior written consent of the  
11 Defendant that produced the Protected Material, no expert or consultant retained by a Defendant  
12 in this matter shall have access to "HIGHLY CONFIDENTIAL – SOURCE CODE" material  
13 produced by another Defendant in this matter;  
14

15 (c) The Court and its personnel;

16 (d) Any designated arbitrator or mediator who is assigned to hear this matter,  
17 or who has been selected by the Parties, and his or her staff, who have signed the  
18 "Acknowledgement and Agreement to Be Bound by Stipulated Protective Order" (Exhibit A);  
19

20 (e) Court reporters and videographers employed in connection with this case;  
21

22 (f) Persons who appear on the face of the Protected Material as an author,  
23 addressee, or recipient of the document or have prior knowledge of the Protected Material as  
established through testimony; and

24 (g) During depositions, current employees of the Producing Party that  
25 produced the documents or information. Pages of transcribed deposition testimony or exhibits to  
26 depositions that reveal Protected Information must be separately bound by the court reporters and  
27 may not be disclosed to anyone except as permitted under this Order.  
28

1 (h) Any other person with the prior written consent of the Producing Party.

2 7.5 Procedures for Approving Disclosure of Protected Material to Experts:

3 (a) A Party that seeks to disclose to an Expert any information or item that has  
4 been designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
5 ONLY" and "HIGHLY CONFIDENTIAL – SOURCE CODE" first must notify, in writing  
6 (including via email), the Designating Party of its intent to make such a disclosure. The  
7 notification shall include a copy of the Expert's current *curriculum vitae* and must identify:

8 (i) The full name and business address of the Expert;

9 (ii) The Expert's current employer(s);

10 (iii) The Expert's previous employer(s) for the preceding four (4) years;

11 (iv) Each person or entity from whom the Expert has received compensation for  
12 work in his/her area of expertise or to whom the expert has provided professional services in  
13 his/her area of expertise at any time during the preceding four (4) years, and a brief description of  
14 the subject matter of the work;

15 (iv) The Expert's qualifications, including a list of publications authored or co-  
16 authored by the Expert in the last 10 years;

17 (v) Any legal action (by name and number of the case, filing date, and court) in  
18 connection with which the Expert has provided any professional services in his/her area of  
19 expertise during the preceding four (4) years, including an indication of whether the Expert was  
20 deposed or provided trial testimony in each such legal action;; and

21 (vi) Any previous or current contractual relationship with any of the Parties.

22 The Party that seeks to make such disclosure to an expert of any information or item that  
23 has been designated Protected Material need not identify to the Designating Party said  
24 information or item to be disclosed, except that the Party must expressly disclose whether

1 SOURCE CODE information is to be disclosed to a proffered Expert. Confidential employment  
 2 or consulting relationships of an Expert may be disclosed as “CONFIDENTIAL” or “HIGHLY  
 3 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information under the terms of this Order.

4 (b) A Party that provides the notice described in the preceding section (7.5(a)) may  
 5 disclose the subject Protected Material to the identified Expert unless, within seven (7) days of  
 6 receipt of the notice, the Party receives an objection to the disclosure, in writing (including via  
 7 email), from the Designating Party. Any such objection must be for good cause and must set forth  
 8 in detail the grounds on which it is based. In the absence of an objection at the end of the seven  
 9 (7) day period, the Expert shall be deemed approved under this Protective Order.

10 (d) A Party that receives a timely written objection as described in the  
 11 preceding section must meet and confer with the Designating Party to try to resolve the matter by  
 12 agreement within seven (7) days following the objection. Only if no agreement is reached after  
 13 the meet and confer, the Party seeking disclosure may seek the Court's assistance in accordance  
 14 with the Court's procedures for resolving discovery disputes within seven (7) days from the date  
 15 of the meet and confer. In any such proceeding, the Party opposing disclosure to the Expert shall  
 16 bear the burden of proving by a preponderance of the evidence that the risk of harm that the  
 17 disclosure would entail (under the safeguards proposed) outweighs the Receiving Party's need to  
 18 disclose the Protected Material to the specific designated Expert.

21 8. **FILING PROTECTED MATERIAL**

22 8.1 All Protected Material must be filed under seal in accordance with the provisions  
 23 of the United States District Court for the District of Delaware's Revised Administrative  
 24 Procedures Governing Filing and Service by Electronic Means.

25 9. **USE OF PROTECTED MATERIAL AT COURT HEARINGS OR**  
 26 **PROCEEDINGS**

27 9.1 The use of Protected Material at any Court hearing or proceeding shall be as  
 28

1 directed by the Court.

2       9.2     In the event that any material designated as Protected Material is used in any Court  
 3 hearing or proceeding, the Party proffering the Protected Material may request that the Court  
 4 close the courtroom, but the decision of whether to do so rests with the judge presiding at the  
 5 hearing or proceeding.

6       10.     **FINAL DISPOSITION**

7       10.1    Unless otherwise ordered or agreed in writing by the Producing Party, within thirty  
 8 (30) days after the final termination of this action, including all appeals (or thirty (30) days after  
 9 the time to appeal has lapsed), each Receiving Party must destroy or return, at the Producing  
 10 Party's request, all Protected Material to the Producing Party. As used in this subdivision, "all  
 11 Protected Material" includes all copies, abstracts, compilations, summaries, or any other form of  
 12 reproducing or capturing any of the Protected Material. The Receiving Party must submit a  
 13 written certification to the Producing Party (and, if not the same person or entity, to the  
 14 Designating Party) by the thirty (30) day deadline.

15       10.2    Notwithstanding the preceding section, Counsel for Defendants are entitled to  
 16 retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda, expert  
 17 reports, correspondence, or attorney work product, even if such materials contain Protected  
 18 Material. Any such archival copies that contain or constitute Protected Material remain subject to  
 19 this Protective Order as set forth in Section 4 (DURATION), above.

20       11.     **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**  
**OTHER LITIGATION**

21       11.1    If a Receiving Party is served with a subpoena or an order issued in other action  
 22 that would compel disclosure of any Protected Material, the Receiving Party must so notify the  
 23 Designating Party, in writing immediately so that the Designating Party has an opportunity to  
 24 object to the disclosure of Protected Material. Such notification must include a copy of the  
 25

1 subpoena or court order.

2       11.2 The Receiving Party also must immediately inform in writing the Party who  
 3 caused the subpoena or order to issue in the other action that some or all the material covered by  
 4 the subpoena or order is the subject of this Order.

5       11.3 The purpose of imposing this duty is to afford the Designating Party in this action  
 6 an opportunity to try to protect its confidentiality interests in the court from which the subpoena  
 7 or order issued. The Designating Party shall bear the burden of seeking protection of its  
 8 confidential material in that court.

9       11.4 Nothing in these provisions should be construed as authorizing or encouraging a  
 10 Receiving Party in this action to disobey a lawful directive from another court.

11       11.5 By entering this order and limiting the disclosure of information in this case, the  
 12 Court does not intend to preclude another court from finding that information may be relevant and  
 13 subject to disclosure in another case. Any person or party subject to this order who becomes  
 14 subject to a motion to disclose another Party's information designated "CONFIDENTIAL",  
 15 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY", or "HIGHLY CONFIDENTIAL –  
 16 SOURCE CODE" pursuant to this order shall promptly notify that party of the motion so that the  
 17 party may have an opportunity to appear and be heard on whether that information should be  
 18 disclosed.

19       12. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

20       12.1 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
 21 Protected Material to any person or in any circumstance not authorized under this Order, the  
 22 Receiving Party must immediately: (a) notify the Designating Party, in writing (which may be  
 23 through email), of the unauthorized disclosure(s); (b) use its best efforts to retrieve all copies of  
 24 the Protected Material; (c) inform the person(s) to whom unauthorized disclosures were made of  
 25

1 all the terms of this Order; and (d) request that such person(s) execute the "Acknowledgement and  
 2 Agreement to Be Bound by Stipulated Protective Order" (Exhibit A). "Immediately" as used  
 3 herein shall mean as soon as possible, but in no event, longer than two (2) business days.

4 **13. PROSECUTION BAR**

5  
 6 Absent written consent from the Producing Party, any counsel representing or experts  
 7 working for Plaintiff who receives access to "HIGHLY CONFIDENTIAL – ATTORNEYS'  
 8 EYES ONLY" or "HIGHLY CONFIDENTIAL - SOURCE CODE" information shall not  
 9 participate, directly or indirectly, in the prosecution, or strategic decisions relating to prosecution,  
 10 of any patent or patent application anywhere in the world (including, without limitation, originally  
 11 filed applications, provisionals, non-provisionals, continuations, divisions, continuations-in-part,  
 12 reexaminations, *inter partes* reviews, post-grant reviews, or reissues), relating to the subject  
 13 matter of this action. For purposes of this paragraph, "prosecution" includes directly or indirectly  
 14 drafting, amending, advising as to, or otherwise affecting the scope or maintenance of patent  
 15 claims. To avoid any doubt, "prosecution" as used in this paragraph does not include representing  
 16 a party in any proceeding before a domestic or foreign agency (including, but not limited to, a  
 17 reissue protest, *ex parte* reexamination or *inter partes* review), in which the validity of a patent is  
 18 challenged, subject to the proscriptions listed above. This prohibition shall begin when access to  
 19 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL –  
 20 SOURCE CODE" information is first received by the affected individual. This prohibition shall  
 21 extend from the time of receipt of such information through and including two (2) years following  
 22 the entry of a final non-appealable judgment or order or the complete settlement of all claims  
 23 against the Party or Parties whose information was received or reviewed.

24  
 25 **14. MISCELLANEOUS**

26  
 27 14.1 Protective Order Not Applicable: None of the provisions of this Protective Order

1 shall apply to the following categories of information that:

2 (a) is now or subsequently becomes generally available to the public through  
3 no fault or breach on the part of the Receiving Party, its counsel, representatives, or Experts;

4 (b) the Receiving Party can demonstrate to have had rightfully in its possession  
5 prior to its production herein or can demonstrate to have been independently developed by the  
6 Receiving Party - without use or benefit of the information;

7 (c) the Receiving Party rightfully obtains after the time of disclosure hereunder  
8 from a non-party having the right to disclose the same to the Receiving Party without limitation;  
9 or

10 (d) the Producing Party produced, disclosed, or provided to the Receiving  
11 Party without an obligation of confidentiality and not by inadvertence or mistake.

12 14.2 Right to Further Relief: Nothing in this Order abridges the right of any person to  
13 seek further or additional protection of any Disclosure or Discovery Material or to seek  
14 modification of the Order by the Court in the future.

15 14.3 Right to Assert Other Objections: By stipulating to the entry of this Protective  
16 Order, no Party waives any right it otherwise would have to object to disclosing or producing any  
17 information or item on any ground not addressed in this Order. Similarly, no Party waives any  
18 right to object on any ground to use in evidence of any of the material covered by this Order.

19 14.4 No Restriction on Advising Client: Nothing in this Order shall be construed to  
20 prevent Counsel from advising their respective clients regarding these cases, even if Counsel must  
21 rely on Protected Information in formulating such advice, as long as the Patent Prosecution Bar is  
22 not violated and no Protected Information is disclosed in violation of this Order.

23 14.5 Limitation on Discovery from Experts: Absent good cause, drafts of expert reports  
24 are not discoverable. Additionally, communications between an Expert (as defined in Section 2.5)  
25

1 and a Party's Counsel are not discoverable except as provided in Rule 26(b)(4)(C) of the Federal  
2 Rules of Civil Procedure. Reports and materials exempt from discovery under this section shall be  
3 treated as attorney work product for the purposes of this case and Protective Order.

4       14.6 Production by Non-Parties: Non-parties from whom documents are requested in  
5 this litigation, whether voluntarily or by subpoena, may (i) designate any documents or  
6 information they produce, as "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS'  
7 EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" to the same extent and in the  
8 same manner as the parties to this litigation matter, and such documents or information shall be  
9 treated by the parties to this litigation matter in the same manner as documents or information so  
10 designated by a party; and (ii) intervene in this litigation matter to enforce the provisions of this  
11 Order as if they were a party.

12       15. **INADVERTENT PRODUCTION OF PRIVILEGED DOCUMENTS**

13       15.1 If any Party produces any Disclosure or Discovery Material information that it  
14 believes is immune from discovery pursuant to the attorney-client privilege, work product  
15 immunity, or any other applicable privilege or immunity, the Producing Party may give written  
16 notice to the Receiving Party that such Disclosure and Discovery Material is deemed privileged  
17 and that return of such Disclosure and Discovery Material is requested. Upon receipt of such  
18 written notice, the Receiving Party shall immediately gather the original and all copies of such  
19 Disclosure and Discovery Material of which the Receiving Party is aware and shall immediately  
20 return the original and all such copies to the Producing Party. The return of such Disclosure and  
21 Discovery Material to the Producing Party shall not preclude the Receiving Party from later  
22 moving the Court to compel production of the returned Disclosure and Discovery Material on the  
23 basis that any privilege applicable thereto has been waived. However, the production of privileged  
24 or otherwise protected Disclosure or Discovery Material in this case, whether inadvertent or  
25

26 or otherwise protected Disclosure or Discovery Material in this case, whether inadvertent or  
27

28

1 otherwise, shall not be deemed – and the Parties expressly waive their rights to argue otherwise –  
2 to constitute a waiver of any privilege or protection in this case or in any other federal or state  
3 proceeding that otherwise would adhere to the Disclosure or Discovery Material information.  
4 This Order shall be interpreted to provide the maximum protection allowed by Federal Rule of  
5 Evidence 502(d).  
6

7 15.2 In the event that a Receiving Party discovers an inadvertent production of material  
8 subject to a claim of privilege or other protection, that Receiving Party shall promptly notify the  
9 Producing Party in writing of same. After being notified, a party must promptly return, sequester,  
10 or destroy the specified information and any copies it has; must not use or disclose the  
11 information until the claim is resolved; must take reasonable steps to retrieve the information if  
12 the party disclosed it before being notified; and may promptly present the information to the  
13 Court under seal for a determination of the claim. The Producing Party must preserve the  
14 information until the claim is resolved.  
15

16 SO ORDERED THIS day of 20 July, 2015.  
17

18   
19 Hon. Paul S. Grewal  
20 United States Magistrate Judge  
21  
22  
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28

1 Dated: July 20, 2015

Respectfully submitted,

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**Attorneys for Defendant  
MICROCHIP TECHNOLOGY, INC.**

## SIGNATURE ATTESTATION

Pursuant to Civil L.R. 5-1(i)(3), I hereby attest that concurrence in the filing of this document has been obtained from each of the signatories identified above by a conformed signature (/s/).

Dated: July 20, 2015 /s/ Thomas W. Ritchie

/s/ Ahren C. Hsu-Hoffman

/s/ Brian C. Banner

**EXHIBIT A**

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND BY  
STIPULATED PROTECTIVE ORDER

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
[print or type full address], declare under penalty of perjury  
that I have read in its entirety and understand the Stipulated Protective Order that was issued by  
the United States District Court for the Northern District of California on \_\_\_\_\_ [date] in the  
cases of *MCU Clocking Solutions, Inc. v. Atmel Corporation*, Case No. 5:15-cv-02212-PSG,  
*MCU Clocking Solutions, Inc. v. Freescale Semiconductor, Inc.*, Case No. 5:15-cv-02213-PSG,  
and *MCU Clocking Solutions, Inc. v. Microchip Technology, Inc.* Case No. 5:15-cv-02546-PSG.  
I agree to comply with and to be bound by all the terms of this Stipulated Protective Order, and I  
understand and acknowledge that failure to so comply could expose me to sanctions and  
punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner  
any information or item that is subject to this Stipulated Protective Order to any person or entity  
except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this Action.

Date:

City and State where sworn and signed:

Printed name:

Signature:

Signature: \_\_\_\_\_